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Peguam Negara Malaysia v Maria Chin bt Abdullah

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)-685–09 OF 2022
MARIANA YAHYA, MOHD NAZLAN AND AZMAN ABDULLAH JJCA
27 NOVEMBER 2024

C

Civil Procedure — Judicial review — Application for leave — High Court allowed application for leave for judicial review against Syariah Court's order granting leave to commence contempt proceedings and show cause notice — Whether High Court had jurisdiction to review decision of Syariah Court — Whether item 1 of State List vested Syariah Court with powers of contempt proceedings — Whether leave application for judicial review was premature as notice to show cause issued by Syariah Court was not a 'decision' amenable to judicial review — Federal Constitution art 121(1A) & Ninth Schedule, State List, item 1 — Rules of Court 2012 O 53 — Syariah Court Civil Procedure (Federal Territories) Act 1998 s 229

D

E

Civil Procedure — Jurisdiction — Conflict of jurisdiction between the High Court and Syariah Court — High Court allowed application for leave for judicial review against Syariah Court's order granting leave to commence contempt proceedings and show cause notice — Whether High Court had jurisdiction to review decision of Syariah Court — Federal Constitution art 121(1A) & Ninth Schedule, State List, item 1 — Syariah Court Civil Procedure (Federal Territories) Act 1998 s 229

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This was an appeal by Peguam Negara Malaysia ('the appellant') against the High Court's decision in allowing the application by Maria Chin bt Abdullah ('the respondent') for leave for judicial review to challenge the decision of the Syariah Court in granting leave to one SM Faisal pursuant to s 229 of the Syariah Court Civil Procedure (Federal Territories) Act 1998 ('Act 585') to commence contempt proceedings against the respondent at the Syariah Court in relation to publication of an article by the respondent ('the leave order'), and the notice to show cause to the respondent. The main issues of law to be determined by the court in the present appeal were: (a) whether the High Court had jurisdiction to review the decision of the Syariah Court ('the first issue of law'); (b) whether item 1 of the State List (as provided under the Ninth Schedule to the Federal Constitution) vested the Syariah Court with powers of contempt proceedings ('the second issue of law'); and (c) whether the leave application for judicial review was premature as notice to show cause issued by the Syariah Court was not a 'decision' amenable to judicial review ('the third issue of law').

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Held, allowing the appellant's appeal with no order as to costs and setting aside the decision of the High Court:

(1) The threshold for granting leave to commence judicial review was very low, and it was normally granted if the application was not frivolous and vexatious, and where the applicant had an arguable case. Despite that, it must be borne in mind that the impugned decision must first be amenable to judicial review (see paras 22 & 24).

(2) In respect of the second issue of law, the words 'the constitution, organization, and procedure of Syariah Court' as stated in item 1 of the State List ought to be interpreted liberally with the widest amplitude to include the power to punish contempt of itself, which was the ancillary and subsidiary matter to be fairly and reasonably comprehended in it. It was clear that item 1 of the State List itself did not directly grant contempt powers to the Syariah Court. Instead, it provided a legislative pathway for Parliament to enact laws that endowed the Syariah Court with these powers. This was exemplified by s 229 of Act 585, which served as a legislative instrument conferring the authority to manage contempt proceedings within the Syariah judicial system. Therefore, while the State List did not directly allocate these powers, it empowered Parliament to legislate them, ensuring that the Syariah Court possessed the necessary tools to uphold its mandate and preserve the sanctity of justice (see paras 38–40 & 59).

(3) In relation to the first issue of law, since item 1 of the State List allowed the Parliament to make laws for the power of contempt proceedings in the Syariah Court which in the present case was s 229 of Act 285, the impugned decisions by the Syariah Courts challenged in the present case were made within their jurisdictions which could not be reversed by the civil court. It must be borne in mind that the case heard by the Syariah Court could not be relitigated by the civil courts to reach a different decision. The inviolability of the Syariah Court's jurisdiction was further enshrined in art 121(1A) of the Federal Constitution that unequivocally stated that civil courts, including the High Court, shall not have jurisdiction over matters within the purview of Syariah Courts. Therefore, the impugned decisions of the Syariah Courts to grant the leave order and notice to show cause should remained valid until it was set aside (see paras 46, 50, 59 & 61).

(4) With respect to the third issue of law, the notice to show cause issued by the Syariah High Court was merely the first procedural step of the commencement of contempt proceedings and was not a final decision that disposed of the contempt proceedings, as such, it was not a final decision within the ambit of O 53 of the Rules of Court 2012 ('the ROC'). The respondent could not be said to be adversely affected in the absence of a decision that affected her legal right. The court opined that

the respondent's judicial review application was premature as it attempted to restrain the Syariah High Court from performing its judicial duty under s 229 of Act 585. Permitting leave for judicial review at this stage would not only hinder the Syariah Court from performing its judicial duty under the law, but it would also allow the respondent to fragment the Syariah Court's decision-making process which should not be allowed for it would impair the efficient administration of public authorities. Further, the respondent must not be allowed to short-circuit the Syariah Court's judicial decision-making process and procedure provided under Act 585 by filing the judicial review application in the civil court (see paras 54–57 & 59).

(5) Though the threshold for leave was low, the court found that the respondent had failed to even get through the low threshold because the decision that the respondent sought to quash was not a final decision amenable to judicial review under O 53 of the ROC, more so to speak about the existence of a prima facie case that warranted further argument at the full inter-partes hearing. In this circumstance, leave application ought to be refused by the learned High Court judge for there was no subject matter for the court to review at the substantive stage. Sufficed it to say that the leave application was wrongly granted by the learned High Court judge (see paras 58–59).

[Bahasa Malaysia summary

Ini adalah rayuan oleh Peguam Negara Malaysia ('perayu') terhadap keputusan Mahkamah Tinggi yang membenarkan permohonan Maria Chin bt Abdullah ('responden') untuk kebenaran semakan kehakiman bagi mencabar keputusan Mahkamah Syariah dalam memberikan kebenaran kepada seorang yang dikenali sebagai SM Faisal menurut s 229 Akta Tatacara Mal Mahkamah Syariah (Wilayah-Wilayah Persekutuan) 1998 ('Akta 585') untuk memulakan prosiding penghinaan terhadap responden di Mahkamah Syariah berhubung dengan penerbitan satu artikel oleh responden ('perintah kebenaran tersebut'), dan notis tunjuk sebab kepada responden. Isu-isu undang-undang yang utama yang perlu diputuskan oleh mahkamah dalam rayuan semasa ialah: (a) sama ada Mahkamah Tinggi mempunyai bidang kuasa untuk menyemak keputusan Mahkamah Syariah ('isu undang-undang pertama'); (b) sama ada butiran 1 Senarai Negeri (seperti yang diperuntukkan di bawah Jadual Kesembilan Perlembagaan Persekutuan) memberi Mahkamah Syariah kuasa bagi prosiding penghinaan ('isu undang-undang kedua'); dan (c) sama ada permohonan kebenaran untuk semakan kehakiman adalah pramatang kerana notis tunjuk sebab yang dikeluarkan oleh Mahkamah Syariah bukanlah satu 'keputusan' yang boleh disemak melalui semakan kehakiman ('isu undang-undang ketiga').

Diputuskan, membenarkan rayuan perayu tanpa perintah mengenai kos dan mengenepikan keputusan Mahkamah Tinggi:

(1) Ambang untuk memberikan kebenaran untuk memulakan semakan kehakiman adalah sangat rendah, dan ia biasanya diberikan jika permohonan tersebut tidak remeh dan menyusahkan, dan apabila pemohon mempunyai kes yang boleh dipertikaikan. Walaupun begitu, perlu diingat bahawa keputusan yang dipertikaikan tersebut haruslah terlebih dahulu boleh disemak melalui semakan kehakiman (lihat perenggan 22 & 24).

(2) Berkenaan dengan isu undang-undang kedua, perkataan 'keanggotaan, susunan, dan tatacara Mahkamah Syariah' seperti yang dinyatakan dalam butiran 1 Senarai Negeri sepatutnya ditafsirkan secara liberal dengan amplitud yang paling luas untuk memasukkan kuasa untuk menghukum bagi penghinaan ke atas Mahkamah Syariah itu sendiri, yang merupakan perkara sampingan dan subsidiari yang harus, secara adil dan munasabahnya, terlingkung di dalamnya. Adalah jelas bahawa butiran 1 Senarai Negeri itu sendiri tidak secara langsung memberikan kuasa berkenaan penghinaan kepada Mahkamah Syariah. Sebaliknya, ia menyediakan laluan perundangan bagi Parlimen untuk menggubal undang-undang yang memberikan kuasa ini kepada Mahkamah Syariah. Ini dapat dilihat melalui s 229 Akta 585, yang berfungsi sebagai instrumen perundangan yang memberikan kuasa untuk menguruskan prosiding penghinaan dalam sistem kehakiman Syariah. Oleh itu, walaupun Senarai Negeri tidak memperuntukkan secara langsung kuasa ini, ia memberi kuasa kepada Parlimen untuk menggubalnya, memastikan Mahkamah Syariah memiliki alat yang diperlukan untuk menegakkan mandatnya dan memelihara kesucian keadilan (lihat perenggan 38–40 & 59).

(3) Berhubung dengan isu undang-undang yang pertama, memandangkan butiran 1 Senarai Negeri membenarkan Parlimen membuat undang-undang berkenaan kuasa prosiding penghinaan di Mahkamah Syariah yang mana dalam kes semasa, undang-undang yang dimaksudkan adalah s 229 Akta 285, keputusan Mahkamah Syariah yang dicabar dalam kes ini telah dibuat dalam bidang kuasa mereka dan keputusan tersebut tidak boleh diubah oleh mahkamah sivil. Perlu diingat bahawa kes yang dibicarakan oleh Mahkamah Syariah tidak boleh dibicarakan semula oleh mahkamah sivil untuk mencapai keputusan yang berbeza. Bidang kuasa Mahkamah Syariah yang tidak boleh dicabuli telah termaktub juga dalam perkara 121(1A) Perlembagaan Persekutuan yang dengan jelas menyatakan bahawa mahkamah sivil, termasuk Mahkamah Tinggi, tidak boleh mempunyai bidang kuasa ke atas perkara dalam bidang kuasa Mahkamah Syariah. Oleh itu, keputusan Mahkamah Syariah yang dipertikaikan yang membenarkan perintah kebenaran dan notis tunjuk sebab tersebut hendaklah kekal sah sehingga ia diketepikan (lihat perenggan 46, 50, 59 & 61).

(4) Berkenaan dengan isu undang-undang ketiga, notis tunjuk sebab yang dikeluarkan oleh Mahkamah Tinggi Syariah hanyalah merupakan langkah pertama prosedur bagi memulakan prosiding penghinaan dan bukanlah keputusan muktamad yang melupuskan prosiding penghinaan, oleh itu, ia bukanlah keputusan muktamad yang terangkum di bawah A 53 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Responden tidak boleh dikatakan terjejas teruk sekiranya tiada keputusan yang menjejaskan hak undang-undangnya. Mahkamah berpendapat bahawa permohonan semakan kehakiman responden adalah pramatang kerana ia cuba menghalang Mahkamah Tinggi Syariah daripada melaksanakan tugas kehakimannya di bawah s 229 Akta 585. Pemberian kebenaran untuk semakan kehakiman pada peringkat ini bukan sahaja akan menghalang Mahkamah Syariah daripada melaksanakan tugas kehakimannya di bawah undang-undang, tetapi ia juga akan membolehkan responden memecah-belahkan proses membuat keputusan Mahkamah Syariah yang tidak sepatutnya dibenarkan kerana ia akan menjejaskan pentadbiran pihak berkuasa awam yang cekap. Selanjutnya, responden tidak boleh dibenarkan memintas proses dan prosedur membuat keputusan kehakiman Mahkamah Syariah yang diperuntukkan di bawah Akta 585 dengan memfailkan permohonan semakan kehakiman di mahkamah sivil (lihat perenggan 54–57 & 59).

(5) Walaupun ambang untuk permohonan kebenaran adalah rendah, mahkamah mendapati bahawa responden telah gagal untuk melepasi ambang rendah tersebut kerana keputusan yang responden ingin batalkan bukanlah keputusan muktamad yang boleh disemak melalui semakan kehakiman di bawah A 53 KKM 2012, apatah lagi untuk membincangkan tentang kewujudan kes prima facie yang memerlukan hujah lanjut pada perbicaraan penuh antara pihak-pihak. Dalam keadaan ini, permohonan kebenaran harus ditolak oleh hakim Mahkamah Tinggi yang bijaksana kerana tiada perkara yang perlu disemak oleh mahkamah pada peringkat substantif. Cukuplah untuk mengatakan bahawa permohonan kebenaran tersebut telah dibenarkan secara salah oleh hakim Mahkamah Tinggi yang bijaksana (lihat perenggan 58–59).]

Cases referred to

AJS v JMH and another appeal [2022] 1 MLJ 778, FC (refd)

Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935, HL (refd)

Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal [2025] 1 MLJ 334, FC (refd)

Gin Poh Holdings Sdn Bhd (in voluntary liquidation) v The Government of the State of Penang & Ors [2018] 3 MLJ 417, FC (refd)

Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 323, FC (refd)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545, FC (refd)
Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101, FC (refd)
Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim [2011] 6 MLJ 490, FC (folld)
Norazura binti Mohd Radzi lwn Nazri bin Kamal [2013] 1 CLJ (Sya) 46 (refd)
Ong Keh Keong v Lembaga Tatatertib Peguam-Peguam [2020] MLJU 1285; [2020] 10 CLJ 181, CA (refd)
R v Sloan [1990] 1 NZLR 474, HC (refd)
Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181, FC (refd)
Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor [1999] 2 MLJ 241, FC (refd)
Taylor's College Sdn Bhd v Ketua Pengarah Kesatuan Sekerja Malaysia & Ors [2009] 3 MLJ 437; [2009] 5 CLJ 153, CA (refd)
Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals [2016] 1 MLJ 585, FC (refd)
WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296, FC (folld)
Zetty bt Zabir lwn Mohammed Rafi bin Moohamed Yaacob (JH 36 BHG I (1434H)) (unreported) (refd)

Legislation referred to

Federal Constitution arts 4(1), 5, 121(1), (1A), Ninth Schedule, List I, item 6(e), List II , item 1
Rules of Court 2012 O 53, O 53 rr 2(4), 3(3)
Syariah Court Civil Procedure (Federal Territories) Act 1998 s 229, 229(3)
Syariah Courts (Criminal Jurisdiction) Act 1965

Appeal from: *Maria Chin bt Abdullah v Datuk Dr Hj Zulkifli Mohamad Al-Bakri Menteri Di Jabatan Perdana Menteri (Hal Ehwal Agama Islam) & Ors* [2023] 8 MLJ 358 (High Court, Kuala Lumpur)

Ahmad Hanir bin Hambaly @ Arwi (Senior Federal Counsel, Attorney General's Chamber) for the appellant.
Rosli bin Dahalan (with Zeti Zulfah bt Hassan @ Zulkifli, Amiratu Al Amirat bt Saleh Mohamed Garbaa and Elani bt Mazlan) (Nurul Hafidzah & Assoc) for the respondent.
Zainul Rijal Abu Bakar (with Danial Farhan Zainul Rijal) (Chambers of Zainul Rijal) watching brief for Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur (MAWIP).

Mariana Yahya JCA:

INTRODUCTION

[1] The present appeal arose from the decision of the High Court on 22 August 2022, which allowed the applicant's (Maria Chin bt Abdullah) application for leave to commence judicial review ('leave application for judicial review') against the respondents.

[2] For purpose of convenience, the parties will be referred to as follows:

(a) Peguam Negara Malaysia referred to as the appellant; and

(b) Maria Chin bt Abdullah referred to as the respondent.

SALIENT FACTS

[3] In October 2019, the respondent knew from the media report that a Syariah High Court judge, Federal Territory, had granted leave ('leave order') to SM Faisal bin Tan Sri SM Nasimuddin Kamal ('SM Faisal') to commence contempt proceedings against the respondent at the Syariah Court.

[4] However, the respondent was unaware of any contempt proceedings initiated against her, and she was never served with the leave order. Subsequently, the respondent wrote to the Syariah Court judge on 29 November 2019 to enquire whether there was any such leave order against her and requested the relevant cause papers to be served on her for her to seek legal advice.

[5] The respondent was then served with the cause papers by the solicitors acting for SM Faisal on 10 December 2019 almost three months since the leave order was granted.

[6] The leave order dated 14 October 2019 stated that the court allowed the application pursuant to s 229(3) of the Syariah Court Civil Procedure (Federal Territories) Act 1998 (Act 585), and ordered to issue the notice to show cause to the respondent that:

> 1. Mahkamah meluluskan permohonan ini berdasarkan peruntukan Seksyen 229(3) Akta Tatacara Mal Mahkamah Syariah (Wilayah-Wilayah Persekutuan) 1998.
>
> 2. *Mahkamah memerintahkan suatu Notis Menunjukkan Sebab hendaklah dikeluarkan dan diserahkan kepada Responden untuk membela diri daripada dikenakan hukuman kerana melakukan perbuatan sebagai penghinaan Mahkamah* pada 05.09.2019 melalui penerbitan artikel yang bertajuk '05 Sep Injustice Against Muslim Women Still Exist In Legal System' melalui laman

sesawang Responden di http://www.mariachinabdullah.org/injustice-against-muslim-women-still-exist-in-the-legal-system/.

3. Mahkamah memerintahkan Notis Menunjukkan Sebab dan Salinan Perintah ini hendaklah diserahkan oleh Pemohon-Pemohon secara kediri kepada Responden. (Emphasis added.)

[7] For convenience, s 229 of Act 585 is reproduced below:

229 Notice to show cause

(1) The Court shall have the jurisdiction to commence proceedings against any person for contempt of Court and may, in such proceedings, make an order of committal for a period not exceeding six months or may impose a fine not exceeding two thousand ringgit.

(2) Where contempt is committed in the face of the Court, it shall not be necessary for the Court to serve the notice to show cause but the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and shall make a proper record of the proceedings.

(3) *In the case of contempt committed outside Court, notice to show cause why an action or proceedings should not be taken against him shall be served personally on the person alleged to have committed such contempt.* (Emphasis added.)

[8] On 24 December 2019, the respondent had filed a notice of application to set aside the leave order and the notice to show cause and an application to stay all subsequent proceedings through new actions pursuant to the direction of the registrar of the Syariah High Court.

[9] On 13 January 2020, the Syariah High Court judge refused to hear the respondent's applications and ordered the respondent to withdraw the applications and to file them afresh. Subsequently, the Syariah High Court judge proceeded with the hearing for the notice to show cause and ordered the respondent to enter into her defence.

[10] On 4 February 2020, the Syariah High Court judge dismissed the respondent's applications. The respondent then applied to the Syariah Appeal Court to review the Syariah High Court's dismissal of the applications.

[11] On 14 July 2020, the respondent was informed that the Syariah Appeal Court had dismissed the application of review without any hearing. On 4 December 2020, the respondent's application for an extension of time to file a review of the leave order and the notice to show cause was also dismissed by the Syariah Appeal Court.

[12] Dissatisfied with the decision, the respondent thereafter lodged a complaint to Jabatan Kehakiman Syariah Wilayah Persekutuan Kuala Lumpur and the then Minister in charge of Islamic affairs vide a letter dated 15 January 2021 ('the impugned letter'). However, there was no response therefrom.

[13] Consequential to that, the respondent commenced the leave application for judicial review in the High Court against Datuk Dr Hj Zulkifli Mohamad Al-Bakri, Menteri di Jabatan Perdana Menteri (Hal Ehwal Agama Islam), Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur (MAWIP), and Jabatan Kehakiman Syariah Wilayah Persekutuan Kuala Lumpur to challenge, inter alia, the following impugned decisions;

(a) the decision of the Syariah Court in granting the leave order and the notice to show cause;

(b) the decision of the Syariah Appeal Court on 4 December 2020 in dismissing the respondent's application for an extension of time to file for a review of the leave order and the notice to show cause which the respondent said was improperly granted by the Syariah Court on 14 October 2019; and

(c) the decision or otherwise omission made by the Minister and Jabatan Kehakiman Syariah Wilayah Persekutuan Kuala Lumpur in allegedly failing to discharge their respective duties by responding to the impugned letter.

[14] At the outset, it is pertinent to note that the High Court acknowledged that the respondent was not challenging any part of the Islamic law which falls within the Syariah Court's jurisdiction, instead, the respondent is challenging the jurisdiction of the Syariah Court to issue the leave order and the notice to show cause purportedly made under s 229 of Act 585. The basis for the challenge is that para 1 of the State List in the Ninth Schedule of the Federal Constitution does not vest the Syariah Court with powers of contempt proceedings and therefore the Syariah Court has acted not within its jurisdiction and has no power to issue the leave order and the notice to show cause to the respondent.

[15] At the leave application for judicial review, the Attorney General ('AG') appeared and objected to the respondent's leave application on the ground that the High Court has no jurisdiction to review Syariah's Court's decision and the notice to show cause is not a 'decision' amendable to judicial review. The AG's involvement at the leave stage is expressly recognised by O 53 r 3(3) of the ROC 2012 which requires the applicant to serve the leave application, statement, and affidavit on the AG. It is trite that the role of the AG at the leave stage is to assist the court in sieving out frivolous applications by appraising the

court of any particular features of the case that would disqualify leave from being granted. A

[16] At the end of the hearing of the leave application, the learned High Court judge was of the considered view that the leave application for judicial review does not offend art 121(1A) of the Federal Constitution, upon the rationale that the civil superior courts retain supervisory jurisdiction under arts 4(1) and 121(1) of the Federal Constitution following the cases of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 (FC) ('Indira Gandhi') and *Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 323 (FC) ('Iki Putra'). B C

[17] More importantly, the learned High Court judge also held that the respondent had met the low threshold required for the grant of leave by showing that there are serious questions of law to be determined as to whether s 229 of Act 585 can be initiated by a private individual or the Syariah Court or whether the Syariah Court is seized with the jurisdiction to interpret s 229 of Act 585 in light of art 5 of the Federal Constitution. D

[18] Furthermore, with regard to the issue of whether the leave application for judicial review is premature as the contempt proceedings were inchoate, the learned High Court judge was of the view that it is not premature as the respondent was adversely affected within the meaning of O 53 r 2(4) of the Rules of Court 2012 ('the RC 2012') as soon as the Syariah Court issued the leave order and the notice to show cause, and the respondent's argument was premised on the point that the whole contempt proceedings were void ab initio. E F

[19] As a result, the learned High Court judge granted leave for the respondent to commence judicial review against all respondents (at the High Court) as well as an order for an interim stay against the contempt proceedings at the Syariah Courts. G

[20] Aggrieved by the decision, the appellant filed an appeal to the Court of Appeal upon the following grounds stated in the memorandum of appeal dated 15 November 2022: H

(a) the learned High Court judge erred in law and fact in deciding that the leave application for judicial review did not violate art 121(1A) of the Federal Constitution as the decision for the contempt proceedings in the Syariah Court that was challenged was within its jurisdiction; I

(b) the learned High Court judge erred in law and fact in deciding based on *Indira Gandhi* and *Iki Putra* that the civil courts have the supervisory

jurisdiction over the decision made by the Syariah Court within its jurisdiction;

(c) the learned High Court judge erred in law and fact in deciding that the court has jurisdiction to hear the respondent's claim on art 5 of the Federal Constitution while the Syariah Court has the jurisdiction on the contempt proceedings which was challenged;

(d) the learned High Court judge erred in law and fact in holding that there are serious questions of law required to be decided at the substantive stage while the Federal Court had decided in *Indira Gandhi*, *Iki Putra*, *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181 (FC) ('Rosliza'), *AJS v JMH and another appeal* [2022] 1 MLJ 778 (FC) ('AJS'), *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor* [1999] 2 MLJ 241 (FC) ('Sukma Darmawan') that the civil court does not have supervisory jurisdiction on the decision by the Syariah Court made within its jurisdiction;

(e) the learned High Court judge erred in law and fact in holding that the impugned decision is premature as the contempt proceedings are still at the leave stage and not decided by the Syariah Court; and

(f) the learned High Court judge erred in law and fact in granting leave for judicial review when the impugned decision was related to the contempt proceedings under s 229 of Act 585 which is a matter under the jurisdiction of the Syariah Court.

[21] At the risk of repetition, the main issues of law arising from the grounds of appeal and the parties' written submissions, which require our determination are listed as follows:

(a) whether the High Court has jurisdiction to review the decision of the Syariah Court (first issue of law);

(b) whether item 1 of the State List vests the Syariah Court with powers of contempt proceedings (second issue of law); and

(c) whether the leave application for judicial review is premature as notice to show cause issued by the Syariah Court is not a 'decision' amenable to judicial review (third issue of law).

OUR ANALYSIS AND FINDINGS

[22] First and foremost, it is pertinent to remind ourselves that the present appeal is currently at the leave stage of judicial review, where it is trite that the threshold for granting leave to commence judicial review is very low. It is normally granted if the application is not frivolous and vexatious, and it justifies further arguments at the substantive stage as held by the Federal Court

in *Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490 (FC), where Raus Sharif FCJ (as His Lordship then was) held that:

> [20] It is clear from the above that a person who is adversely affected by the decision of a public authority can make an application for a judicial review of that decision. But the person must first obtain leave before his substantive motion can be heard. *At the leave stage without the need to go into depth of the abundance of authorities, suffice for us to state that the threshold for the granting of such leave is very low. Leave is normally granted if the application is neither frivolous nor vexatious and it justifies further argument on a substantive motion* (see *Association of Bank Officers, Peninsular Malaysia v Malaysian Commercial Bank Association* [1990] 3 MLJ 228, *Bandar Utama Development Sdn Bhd & Anor v Lembaga Lebuhraya Malaysia & Anor* [1998] 1 MLJ 224, *Mohamed Nordin bin Johan v Attorney-General Malaysia* [1983] 1 MLJ 68 and *JP Berthelsen v Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134). (Emphasis added.)

[23] In the case of *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd* [2012] 4 MLJ 296 (FC), Suriyadi FCJ in delivering the judgment of the Federal Court was of a similar opinion that:

> [12] For purposes of its application the appellant had alluded to the statutory route of O 53 of the Rules. Under this order, two stages are anticipated, with the leave stage being the first, to be followed closely by the substantive hearing after successfully [sic] obtaining leave at the High Court. *At the leave stage, on a quick perusal of the material available, if the court thinks that subsequently at the substantive hearing stage, an arguable case maybe disclosed, and the relief sought may be granted, leave should be granted* (*IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617). In Malaysia, the Federal Court in *Mohamed Nordin bin Johan v Attorney-General, Malaysia* [1983] 1 MLJ 68; [1983] CLJ Rep 271 when allowing the appeal, opined that 'the point taken was not frivolous to merit refusal of leave in limine and justified argument on a substantive motion for certiorari'. *Without the need to go into depth of the abundant authorities, suffice if we state that leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though ie unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.* (Emphasis added.)

[24] As guided by the authorities above, the threshold for granting leave to commence judicial review is very low, and it is normally granted if the application is not frivolous and vexatious, and where the appellant has an arguable case. Despite that, it must be borne in mind that the impugned decision must first be amenable to judicial review.

[25] In the present appeal, the appellant raised the objection that the High Court has no jurisdiction to review Syariah Court's decision and the notice to show cause is not a decision amenable to judicial review, which is very much encapsulated in the main issues of law as abovementioned.

Item 1 of the State List

[26] In order to determine whether the High Court has jurisdiction to review the decision of the Syariah Court, it is of paramount importance to first determine the Second Issue of Law to see whether the legislative entry under item 1 of the State List allows Parliament to make law for the power of contempt proceedings in the Syariah Court, and also understand the scope of the Syariah Court in our constitutional context.

[27] In the case of *Indira Gandhi,* Zainun Ali FCJ in delivering the judgment of the Federal Court had explained in great detail the status of the Syariah Court and the difference between the civil court and the Syariah Court:

> STATUS OF SYARIAH COURTS
>
> [59] By way of comparison, in as much as the civil courts are ensconced within the Constitutional framework, Syariah Courts are as yet non-existent, *until such time when the State Legislature makes law to establish them, pursuant to the powers given it under item 1 of the List If (State List) in the Ninth Schedule of the Constitution*. In other words, *the status of Syariah Courts is dependent on the State Legislature.* As the Federal Court expressed in *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101 (at paras [32]–[33]):
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> > ... *The Legislature of a State may make law to set up or constitute the Syariah Courts in the State. Until such law is made such courts do not exist.* The position is different from the case of the Civil High Courts, the Court of Appeal and the Federal Court. In the case of those civil courts, there is a whole Part in the Constitution (Part IX) with the title 'the Judiciary'.
> >
> > So the civil High Courts, the Court of Appeal and the Federal Court are established by the Constitution itself. But, that is not the case with the Syariah Courts. *A Syariah Court in a state is established or comes into being only when the Legislature of the State makes law to establish it, pursuant to the powers given to it by item 1 of the State List.* In fact the position of the Syariah Courts, in this respect, is similar to the Sessions Courts and the Magistrates' Courts. In respect of the last two mentioned courts, which the Constitution call 'inferior courts', art 121(1) merely says, omitting the irrelevant parts:
> >
> > 121(1) There shall be ... such inferior courts as may be provided by federal law ... (Emphasis added.)
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> [60] *Article 74 of the Federal Constitution confers powers on the Legislature of a state to make laws, with respect to any of the matters enumerated in the State List or the Concurrent List.* Of relevance to the present appeals is item 1 of the State List, which reads as follows:

1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic Law and personal and family law of persons professing the religion of Islam, including the Islamic Law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions, and non-charitable trusts; Wakafs and the definition and regulation of charitable and religions trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State: Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islamic against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organisation and procedure of Syariah Courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom. (Emphasis added.)

[61] *The jurisdiction of Syariah Courts must be provided for by the State Legislature within the limits of item 1; the courts do not have automatic jurisdiction over all the matters mentioned (see Latifah bte Mat Zin para [43]), in that its jurisdiction must be expressly conferred by state legislations.* In other words, the state must claim ownership over the subject matters that fall within the jurisdiction of the syariah courts by providing for it expressly in its legislation; because otherwise, the syariah courts couid he excluded from deciding on a subject matter which falls within item 1 of List II (State List) in the Ninth Schedule to the Federal Constitution. This is an important point which in the past had affected the full effect of the Syariah Court's power when there is no express and clear provision enacted in the state enactment A case in point is *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489. In that case, the Federal Court held that in the absence of any express provision (in the then Kedah Administration of Muslim Law Enactment 1962 conferring jurisdiction on the Syariah Court to decide on questions of apostasy), the Syariah Court has jurisdiction by implication; the court held that this is to be inferred from the language of the relevant provisions of the state enactments with regard to the conversion of Islam. (Emphasis added.)

[62] Speaking through Mohd Dzaiddin FCJ (as he then was) in Soon Singh, His Lordship said at p 501:

From the analysis of the State Enactments, it is clear that all State Enactments and the Federal Territories Act contain express provisions vesting the syariah courts with jurisdiction to deal with conversion to Islam. On the other hand, only some State Enactments expressly confer jurisdiction on the syariah courts to deal with conversion out of Islam. In this regard, we share the view of Hashim Yeop A Sani CJ (Malaya) in *Dalip Kaur* p 7 that 'clear provisions should be incorporated in all State Enactments to avoid difficulties of interpretation by the civil courts', particularly in view of the new cl (1A) of art 121 of the Constitution which as from 10 June 1988 had taken away the jurisdiction of the civil courts in

respect of matters within the jurisdiction of the syariah courts. Be that as it may, in our opinion, the jurisdiction of the syariah courts to deal with the conversion out of Islam, although not expressly provided in the State Enactments, can be read into them by implication derived from the provisions concerning conversion into Islam.

[63] The above view was approved in *Latifah bte Mat Zin*. The jurisdiction of the syariah courts to determine a subject matter of a dispute must be expressly conferred by the state legislation. (Emphasis added.)

[28] Accordingly, the status of the Syariah Court on the constitutional basis can be concisely summarised as follows:

(a) the status of Syariah Court is dependent on the State Legislature, which makes law to establish them pursuant to the powers under item 1 of the State List;

(b) in other words, a Syariah Court in a state is established only when the State Legislature makes a law to establish it; and

(c) the jurisdiction of Syariah Court must be provided for by the State Legislature within the limits of item 1 of the State List, its jurisdiction must be expressly conferred by state legislation. Otherwise, the Syariah Court could be excluded from deciding on a subject matter which falls within item 1 of the State List.

[29] In the present appeal, as manifested in the leave order and the application for leave to commence contempt proceedings, the contempt proceedings were instituted in the Syariah High Court at the Federal Territory of Kuala Lumpur.

[30] Pursuant to the academic reference, 'Malaysian Legal System' (2nd Ed, CLJ Publication, 2020), it provides that the power of establishment of Syariah Court in the Federal Territories is vested with Parliament, as follows:

The constitution, organisation, and procedure of the Syariah courts are established by the State Legislature with *the exception of the Federal Territories, where the power is vested with the Parliament.* (Emphasis added.)

[31] Furthermore, under item 6(e) of List I — Federal List of the Ninth Schedule to the Federal Constitution ('Federal List'), it expressly provides that Parliament can make law for the government and administration with regard to Islamic law to the same extent as provided in item 1 of the State List for the Federal Territory of Kuala Lumpur, as follows:

6. The machinery of government, subject to the State List, but including —

...

(e) Government and administration of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya including *Islamic law therein to the same extent as provided in item 1 in the State List* and in respect of the Federal Territory of Labuan, native law and custom to the same extent as provided in item 13 of the Supplement to State List for States of Sabah and Sarawak;

... (Emphasis added.)

[32] Therefore, the jurisdiction of Syariah Court in the Federal Territory of Kuala Lumpur is provided for by Parliament within the constitutional limit of item 1 of the State List.

[33] For convenience, arts 121(1) and 121(1A) of the Federal Constitution as well as item 1 of the State List are reproduced as follows:

(a) art 121(1) and 121(1A) of the Federal Constitution:

121 Judicial power of the Federation

(1) There shall be two High Courts of co-ordinate jurisdiction and status, namely —

(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and

(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

(c) (Repealed).

and such inferior courts as may be provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

(1A) *The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.* (Emphasis added.)

(b) item 1 of the State List:

1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or

A any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; *the constitution, organisation and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters*
B *included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom.* (Emphasis added.)

C **[34]** As shown in item 1 of the State List, it allows Parliament or the State Legislature to make law for 'the constitution, organisation, and procedure of Syariah courts'. Consequently, it then further raises the pertinent point that whether such legislative entry under item 1 of the State List allows Parliament to make law for the power of contempt proceedings in the Syariah Court.

D

[35] The purpose and nature of contempt of court indicate that contempt of court is encapsulated in a wider context on the conduct in relation to court proceedings for the purpose of upholding the administration of justice.

E

[36] Pursuant to the seminal case of *Gin Poh Holdings Sdn Bhd (in voluntary liquidation) v The Government of the State of Penang & Ors* [2018] 3 MLJ 417 (FC), the Federal Court had laid down the principles of interpreting the legislative entries as follows:

F [61] In brief, the principles applicable to the interpretation of entries in the legislative lists as established in the cases above may be condensed thus:

(a) the entries in the legislative lists do not confer legislative power. Rather, they are broad heads or fields of legislation to demarcate the respective areas in which Parliament and the State Legislature may operate;

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(b) *the entries must be interpreted liberally with the widest amplitude, and not narrowly or restrictively. Each entry extends to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in it*;

(c) *the rule of widest construction does not permit an entry to be interpreted so as* to include matters with no rational connection to it, or *to override or render meaningless another entry*;

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(d) in the event of apparent conflict or overlap between entries, the court should attempt to reconcile the entries by adopting a harmonious construction; and

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(e) in interpreting a particular entry, the court should confine its decision to the concrete question arising from the case, without pronouncing a more exhaustive definition than is necessary. (Emphasis added.)

[37] Accordingly, in interpreting the entries of item 1 of the State List, the court ought to interpret them liberally with the widest amplitude, and not narrowly or restrictively. It must also bear in mind that each entry extends to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in it. Most importantly, it shall not be interpreted so as to include matters with no rational connection to it or to override or render meaningless another entry.

[38] In applying the principles as enunciated above, the words 'the constitution, organisation, and procedure of Syariah courts' ought to be interpreted liberally with the widest amplitude to include the power to punish contempt of itself, which is the ancillary and subsidiary matter to be fairly and reasonably comprehended in it, upon the following grounds that:

(a) at its heart, contempt of court is about preserving the sanctity of justice. Courts are the guardians of justice, and for justice to be served, they must operate in an environment free from interference and disruption. The process of adjudication demands a setting where truth and law can be examined without fear, favour, or the taint of external pressures. Contempt of court acts as a safeguard, a shield that upholds the dignity and authority of judicial proceedings. Without the ability to enforce respect for the court, the entire machinery of justice would be left vulnerable to those who seek to subvert it;

(b) moreover, the power to address contempt is essential for the courts to counteract actions that threaten to obstruct, prejudice, or otherwise undermine their proceedings. This power is not a mere punitive tool; it is a necessary instrument to ensure that the courts remain effective in their role as arbiters of justice. Whether the contempt arises from actions targeting a particular case or the court's overall authority, the ability to address such challenges is indispensable. The courts must be empowered to enforce their orders, maintain their integrity, and ensure that justice is delivered without undue delay or distortion;

(c) beyond the courtroom, there is a broader societal imperative at play. The courts stand as one of the fundamental pillars of society, providing a forum where grievances are aired, and disputes are resolved. The authority of the courts must be unimpeachable, for it is this authority that underpins the rule of law. If the courts are seen as weak or ineffective, the entire legal system risks falling into disrepute. Society depends on the courts to maintain order, and this order is jeopardised if the authority of the courts can be flouted without consequence. Allowing interference with the court's proceedings threatens the very foundation upon which justice is built, leading to a breakdown in the social contract that binds us;

(d) the capacity of the Syariah Courts to penalise contempt is not just a procedural matter; it is a matter of survival for the courts' authority and

relevance. Without this power, the Syariah Courts would be rendered ineffectual, and vulnerable to being challenged or disregarded by those unwilling to respect their decisions. Thus, the ability to sanction contempt is not merely incidental but is intrinsically linked to the 'constitution, organisation, and procedure of Syariah courts'. These terms must be interpreted in a manner that preserves the court's mandate, ensuring that the legislative framework remains robust and effective in empowering the courts to perform their role; and

(e) to understand these terms narrowly would risk rendering the Syariah Courts' provisions under item 1 of the State List ineffective. The drafters of our Constitution and laws intended for these courts to function as independent, authoritative institutions. By embracing a comprehensive interpretation, we uphold not only the letter but the spirit of the law, ensuring that the jurisdiction and authority of the Syariah Courts are fully respected and preserved. In doing so, we maintain the rule of law and justice within our community, affirming the courts as the cornerstones of our legal system.

[39] In delving into the nuances of the Syariah Court's authority, it becomes evident that while the explicit mention of contempt of court is not present in item 1 of the State List, its essence is inherently captured within the broader terms 'the constitution, organisation, and procedure of Syariah courts'. As we have mentioned earlier, this interpretation should be viewed through the contextual lens established by the significant principles previously outlined, highlighting how these elements are interwoven into the fabric of the legislative framework.

[40] Addressing the second issue of law, it is clear that item 1 of the State List itself does not directly grant contempt powers to the Syariah Court. Instead, it provides a legislative pathway for Parliament to enact laws that endow the Syariah Court with these powers. This is exemplified by s 229 of Act 585, which serves as a legislative instrument conferring the authority to manage contempt proceedings within the Syariah judicial system. Therefore, while the State List does not directly allocate these powers, it empowers Parliament to legislate them, ensuring that the Syariah Court possesses the necessary tools to uphold its mandate and preserve the sanctity of justice.

Jurisdiction of the High Court to review Syariah Court's decision

[41] At this juncture, it is therefore pertinent to determine whether the High Court has the jurisdiction to review the impugned decision of the Syariah Court which is conferred with the power to punish contempt of itself under s 229 of Act 585.

[42] In the case of *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101 (FC) ('Latifah'), the Federal Court explained the scope of art 121(1A) of the Federal Constitution as follows:

> [50] Something should be said about cl (1A) of art 121. This clause was added by Act A 704 and came into force from 10 June 1988. As explained by Professor Ahmad Ibrahim, who I would say was the prime mover behind this amendment in his article The Amendment of Article 121 of the Federal Constitution: Its effect on the *Administration of Islamic Law* [1989] 2 MLJ xvii:
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> > *One important effect of the amendment is to avoid for the future any conflict between the decisions of the Syariah Courts and the Civil Courts which had occurred in a number of cases before.* For example, in *Myriam v Ariff* …
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> [51] Prior to the establishment of the syariah courts, custody of children, Muslim and non-Muslim, was within the jurisdiction of the civil courts. Then the syariah courts were established with jurisdiction regarding custody of Muslim children, pursuant to the provision of the State List. However, in *Myriam v Mohamed Arif*, the High Court held that it still had jurisdiction regarding custody of Muslim children. Hence the amendment.
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> [52] *Actually, if laws are made by Parliament and the Legislatures of the States in strict compliance with the Federal List and the State List, and unless the real issues are misunderstood, there should not be any situation where both courts have jurisdiction over the same matter or issue.* It may be that, as in the instant appeal, the granting of the letters of administration and the order of distribution is a matter within the jurisdiction of the civil court but the determination of the Islamic law issue arising in the petition is within the jurisdiction of the syariah court. But, these are two distinct issues, one falls within the jurisdiction of the civil court and the other falls within the jurisdiction of the syariah court Still, there is a clear division of the issues that either court will have to decide. So, there is no question of both courts having jurisdiction over the same matter or issue.
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> [53] Of course, such a situation can arise where the Legislature of a State makes law that infringes on matters within the Federal List. I am quite sure that there are such laws made by the Legislatures of the States after the introduction of cl (1A) of art 121 even though I shall refrain from mentioning them in this judgment. In such a situation the civil court will be asked to apply the provision of cl (1A) of art 121 to exclude the jurisdiction of the civil court. The civil court should not be influenced by such an argument. *Clause (1A) of art 121 was not introduced for the purpose of ousting the jurisdiction of the civil courts*. The question to be asked is: Are such laws constitutional in the first place? And the constitutionality of such laws are a matter for the Federal Court to decide — art 128. (Emphasis added.)

[43] Subsequently, in the case of *Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals* [2016] 1 MLJ 585 (FC) ('Viran'), the Federal Court in following the case of *Latifah* was of the similar opinion that:

> [25] It is clear that *art 121(1A) was introduced not for the purpose of ousting the jurisdiction of the civil courts. It was introduced in order to avoid any conflict between the decision of the Syariah Courts and the civil courts* which had occurred in a number

of cases before. In the present case, the conflict arose because the ex-husband had brought his case to the Syariah High Court. But as discussed earlier, the LRA continues to bind the ex-husband despite his conversion to Islam. The Syariah Courts have no jurisdiction over the ex-husband's application to dissolve his civil marriage with the ex-wife. Neither have the Syariah Courts jurisdiction over custody of the children born from the civil marriage under the LRA. The Syariah Courts have jurisdiction only over matters relating to divorce and custody when it involves a Muslim marriage, solemnised according to Muslim Law. When one of the parties is a non-Muslim, the Syariah Courts do not have the jurisdiction over the case even if the subject matter falls within their jurisdiction.

[26] Thus, *it is important for the civil courts and Syariah Courts not to transgress into each other's jurisdiction.* It is also important to note that both the Syariah Courts and the civil courts are creatures of statutes and they owe their existence to the Federal Constitution, the Acts of Parliament, and the State Enactments. It should be to these relevant statutes that both courts should look to in determining whether they have jurisdiction or not. As rightly pointed by Abdul Hamid Mohamad FCJ (as he then was) in *Latifah bte Mat Zin* that if laws made by Parliament and the Legislature of the State are in strict compliance with the Federal List and State List, then there should not be any situation where both courts have jurisdiction over the same subject matter. (Emphasis added.)

[44] Recently, the Federal Court in the case of *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal* [2025] 1 MLJ 334 (FC), Abu Bakar Jais FCJ held that:

[148] Second, for this court to note what actually did the appellant request for at the Syariah High Court and what was the decision of the same. The grounds of judgment of the Syariah High Court is an exhibit in the appellant's OS which we had the liberty to examine. However, it ought to be made clear, *I am not attempting to review the decision of the Syariah High Court in any manner as I am fully aware I am not seized with the jurisdiction to do that*. Having said that, I am also aware there are expressed views that say Syariah Courts are inferior courts, thus making it possible at least by deduction to review its decisions. *I respectfully depart from those opinions as I would show in due course other case law authorities that do not find Syariah Courts as being inferior.*

[149] I would merely state what was requested by the appellant at the Syariah High Court and the decision of the same. This in turn would assist in understanding that decision having regard to the recognition of that court under our Federal Constitution. *It could not be disputed and should always be acknowledged that the Syariah High Court is a competent court under our own Federal Constitution, the supreme law in the country. Its decision commands the greatest respect and should accordingly be binding against all parties rightly coming under its jurisdiction.* In this regard, art 74(2) of the Federal Constitution, reads as follows:

> Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

[150] The State List mentioned above in turn provides that the States have the power to establish Syariah Courts which shall have jurisdiction over persons professing the religion of Islam on matters enumerated.

[151] It is also crucial to note *there is also no authority to say that when a Syariah Court has heard the case, considered the submissions made, and pronounced its decision, a civil court can subsequently hear, consider, and come to a decision different from a Syariah Court. The case could not be relitigated by the civil courts*, in this instance by the HC and COA. The majority at the COA says the decision of a Syariah Court in the context of this case could not be unravel. In this regard art 121(1A) of the Federal Constitution reads:

> The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

[152] Clause (1) above refers to civil courts. It should also be obvious the Syariah Courts have jurisdiction to determine the very issue brought by the appellant there ie she is no longer a Muslim. In addition, *Rosliza* pointed out the Syariah Courts have the jurisdiction for apostacy cases. The appellant's case before the Syariah Courts was indeed also an apostacy case as the appellant wanted to be declared no longer a Muslim.

[153] *Reading art 121(1A) above with the State List in the Ninth Schedule of the Federal Constitution, the Syariah courts have jurisdiction over persons professing the religion of Islam in respect of any matters stipulated therein and include Islamic law and personal and family law of persons professing the religion of Islam.*

[154] In the Syariah High Court, as indicated earlier the appellant requested from that court a declaration that she was no longer a Muslim.

[155] I also accept *Indira Gandhi* is quite explicit in explaining the jurisdiction of the Syariah Court vis a vis art 121(1A) of the Federal Constitution when it approvingly quoted Andrew Harding. This is said as follows:

> [86] Thus the amendment inserting cl (1A) in art 121 does not oust the jurisdiction of the civil courts nor does it confer judicial power on the Syariah courts. More importantly, Parliament does not have the power to make any constitutional amendment to give such an effect; it would be invalid, if not downright repugnant, to the notion of judicial power inherent in the basic structure of the Constitution. The purport and effect of art 121(1A) is eloquently explained by *Harding* as follows:
>
> > *The amendment does not purport to oust the jurisdiction of the High Court to review decisions of the Syariah Courts. It merely says, in effect, that the ordinary courts cannot exercise the Syariah Court's jurisdiction, a position which it should he noted, applies to any inferior jurisdiction; it is indeed a cardinal principle of judicial review that the court cannot substitute its decision for that of the inferior jurisdiction whose decision is reviewed*. It does not therefore seem possible that the Syariah Courts, by this small amendment, have been converted into a totally separate legal system … As things stand the civil courts exercise the power of judicial review and this is of course part of the judicial power. Nothing in cl 1A attempts to interfere with this proposition … *For these reasons it seems that clause 1A*

was enacted for the avoidance of doubt It seeks to ensure that decisions made within jurisdiction by the Syariah Courts are not reversed by the civil courts. The qualification 'made within jurisdiction' is important; the ordinary courts can still decide whether a given decision is within jurisdiction, just as they can with any inferior court. In this sense the primacy of the civil courts has not been disturbed. (Emphasis added.)

[156] The words in bold are important. First, in the context of the operation of art 121(1A) of the Federal Constitution and following *Indira Gandhi* as above, as pointed out, civil courts could not exercise a Syariah Court's jurisdiction. In the context of our case, civil courts could not exercise jurisdiction of the Syariah Courts for apostacy cases as the same is already ruled by *Rosliza* to be within the purview of the Syariah Court's jurisdiction. As explained, in our present case, at the Syariah High Court the appellant requested a declaration she is no longer a Muslim. This is therefore an apostacy case.

[157] Second, the words in bold indicate, *a civil court could not substitute its own decision in replacement of a Syariah Court's decision.* In our case, the Syariah High Court had decided the appellant is still a Muslim and confirmed by the Syariah Court of Appeal. What the HC in turn did was in effect a reversal of the Syariah Courts' decisions. The HC as mentioned reversed that decision of the Syariah Courts by granting the declaration the appellant is not a person professing the religion of Islam. Indeed, the HC had substituted the Syariah High Court's decision with its own decision.

[158] Third, the words in bold above indicate that *cl 1A of art 121 of the Federal Constitution was enacted for the avoidance of doubt. As stated, it seeks to ensure that decisions made within jurisdiction by the Syariah Courts are not reversed by the civil courts.* (Emphasis added.)

[45] Based upon the line of authorities referred to above, the principles with regard to art 121(1A) of the Federal Constitution in relation to the jurisdictions between the civil court and Syariah Court are thus summarised as follows:

(a) one of the important effects of art 121(1A) of the Federal Constitution is to avoid any conflict between the decisions of the Syariah Courts and the civil courts;

(b) art 121(1A) of the Federal Constitution was not introduced for the purpose of ousting the jurisdiction of the civil courts, but to avoid any conflict between the decision of the Syariah courts and the civil courts;

(c) the Syariah courts are not inferior courts. The Syariah High Court is a competent court under the Federal Constitution. Its decision commands the greatest respect and should accordingly be binding against all parties rightly coming under its jurisdiction;

(d) the case heard by the Syariah Court could not be relitigated by the civil courts. There is also no authority to say that when a Syariah Court has

heard the case, considered the submissions made, and pronounced its decision, a civil court can subsequently hear, consider, and come to a decision different from a Syariah Court;

(e) reading art 121(1A) of the Federal Constitution with the State List, the Syariah Courts have jurisdiction over persons professing the religion of Islam in respect of any matters stipulated therein and include Islamic law and personal and family law of persons professing the religion of Islam;

(f) art 121(1A) of the Federal Constitution does not purport to oust the jurisdiction of the High Court to review decisions of the Syariah Courts. It merely says, in effect, that the ordinary courts cannot exercise the Syariah Court's jurisdiction, a position which it should be noted, applies to any inferior jurisdiction; it is indeed a cardinal principle of judicial review that the court cannot substitute its decision for that of the inferior jurisdiction whose decision is reviewed; and

(g) art 121(1A) of the Federal Constitution was enacted for the avoidance of doubt to ensure that decisions made within the jurisdiction of the Syariah Courts are not reversed by the civil courts.

[46] Applying the principles discerned above, it is observed that, since item 1 of the State List allows Parliament to make law for the power of contempt proceedings in the Syariah Court which in our present case is s 229 of Act 585, the impugned decisions by the Syariah Courts challenged in the present case were made within their jurisdictions which cannot be reversed by the civil court.

[47] It is pertinent to note that the respondent submitted that even if s 229 of Act 585 vests the Syariah Court with jurisdiction over contempt, it is exercisable by the Syariah Court itself and not at the initiation of the litigants by referring to the cases decided by the Syariah Court of Appeal in *Norazura binti Mohd Radzi lwn Nazri bin Kamal* [2013] 1 CLJ (Sya) 46 and *Zetty bt Zabir lwn Mohammed Rafi bin Moohamed Yaacob* (JH 36 BHG I (1434H)) (unreported).

[48] However, it is submitted that the above submission is in relation to the validity of the decision made by the Syariah Court or the application of s 229 of Act 585, rather than jurisdiction. The earlier finding has been made that item 1 of the State List allows Parliament to make law for the power of contempt proceedings in the Syariah Court which is in our present case section 229 of Act 585, and therefore the impugned decisions by the Syariah Courts challenged in the present case were made within their jurisdictions which cannot be reversed by the civil court.

[49] In the case of *Viran*, the Federal Court had held that even though it was

of the view that the Syariah Court had no jurisdiction to make a custody order, such order still remained valid until it is set aside as follows:

> [55] In the present appeal, there are two custodial orders. One was the Syariah High Court's order dated 19 September 2013, which granted custody of the children to the ex-husband. The other was the Civil High Court's order dated 7 April 2014, which gave custody of the children to the ex-wife. We are of the view that in light of the existence of the two conflicting custodial orders, the High Court judge should not have entertained the application of the ex-wife for the recovery of Mithran from the ex-husband. *We acknowledge that by our decision in relation to Question 1 above, the Syariah Courts have no jurisdiction in this case to make the custody order. However, Syariah Court order remained a valid order until it is set aside.* Thus, with respect, the High Court judge, cannot direct the IGP or his officers to execute the High Court judgment, irrespective of the Syariah High Court order. (Emphasis added.)

[50] In analogy, the impugned decisions of the Syariah Courts to grant the leave order and notice to show cause should therefore remain valid until it is set aside. It must be borne in mind that the case heard by the Syariah Court couid not be relitigated by the civil courts to reach a different decision. It must be emphasised that a decision made within the jurisdiction of the Syariah Court cannot be reversed by the civil courts.

Premature leave application for judicial review

[51] With regard to the third issue of law as to whether the leave application for judicial review is premature as the notice to show cause issued by the Syariah Court is not a 'decision' amenable to judicial review.

[52] It is trite law that the purpose of an order for certiorari is to quash the legal effect of a decision. In England, in the case of *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935, the House of Lords held that for a decision to be susceptible to the court's reviewing powers, there must first be a decision by a decision maker or a refusal by him to make a decision, and, that decision must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy. Under the scheme of O 53 of the ROC 2012, only a person adversely affected by the decision of a public authority shali be entitled to make the application for judicial review (see: *Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490, at pp 500, para 26).

[53] The notice to show cause on the respondent by the Syariah High Court does not conclusively determine the rights of the respondent. We agree with the

learned counsel for the appellant that it also does not affect the right of the respondent to state her defence before the Syariah High Court as to why she should not be cited for contempt. Excerpt of the notice to show cause says:

> AMBIL PERHATIAN bahawa anda dikehendaki hadir di Mahkamah Tinggi Syariah Wilayah Persekutuan Kuala Lumpur (Dewan 4) pada hah Isnin pada 2 haribulan Disember 2019, pukul 9.00 pagi untuk menunjukkan sebab dan/atau membela diri daripada dikenakan hukuman kerana melakukan perbuatan sebagai penghinaan Mahkamah pada 05.09.2019 melalui penerbitan artikel yang bertajuk '05 Sep Injustice Against Muslim Woman still exist in Legal System' melalui laman sesawang anda di http:www.mariachinabdullah.org/injustice-against-muslim-women-still-exist-in-the-legal-system/.

[54] In our view, this notice to show cause issued by the Syariah High Court is merely the first procedural step of the commencement of contempt proceedings and is not a final decision by the Syariah High Court. It is trite that a 'decision' must go beyond what is merely administrative or procedural and not every decision made under statutory authority is subject to review (see: *R v Sloan* [1990] 1 NZLR 474).

[55] The contempt proceeding has yet to be heard and determined by the Syariah High Court. The Syariah High Court should not be hindered from proceeding with its judicial duty under s 299 of Act 585 ie to hear and determine the contempt proceedings. The decision to issue the show cause is not a final decision that disposes of the contempt proceedings and thus, is not a final decision within the ambit of O 53 of the ROC 2012. The respondent cannot be said to be adversely affected in the absence of a decision that affects her legal right.

[56] It is our respectful view that the application for judicial review filed by the respondent is premature as it attempts to restrain the Syariah High Court from performing its judicial duty under the law. Permitting leave for judicial review at this stage would not only hinder the Syariah Court from performing its judicial duty under the law, but it would also allow the respondent to fragment the Syariah Court's decision-making process. This fragmentation of the decision-making process must not be allowed for it will impair the efficient administration of public authorities (see: *Taylor's College Sdn Bhd v Ketua Pengarah Kesatuan Sekerja Malaysia & Ors* [2009] 3 MLJ 437; [2009] 5 CLJ 153 (CA)).

[57] In addition to that, the respondent must not be allowed to short-circuit the Syariah Courts'judicial decision-making process and procedure provided under Act 585 by filing the judicial review application in the civil court (see *Ong Keh Keong v Lembaga Tatatertib Peguam-Peguam* [2020] MLJU 1285; [2020] 10 CLJ 181 (CA)).

[58] Though the threshold for leave is low, we find that the respondent has failed to even get through the low threshold for the decision that is seeking to quash is not a final decision amenable for judicial review under O 53 more so to speak about the existence of a prima facie case that warranted further argument at the full inter-partes hearing. In this circumstance, leave application ought to be refused by the learned High Court judge for there is no subject matter for the court to review at the substantive stage. Suffice it to say that the leave application was wrongly granted by the learned High Court judge.

CONCLUSION

[59] In conclusion, based on the authorities and discussion above, it is our considered view that the learned High Court judge had erred in law and facts when His Lordship allowed the leave for judicial review that warrant our appellate intervention. We unanimously find that the leave application for judicial review should be dismissed. There are merits in the appellant's appeal and the appellant's appeal should be allowed upon the following grounds that:

(a) in recognising the jurisdiction and authority vested in the Syariah Courts, it is paramount to appreciate the comprehensive legislative framework that forms the foundation of their operation. At the core of this framework is item 1 of the State List, a critical element of Malaysia's constitutional structure, which grants Parliament the authority to enact laws concerning the constitution, organisation, and procedure of the Syariah Courts. This legislative competence is not limited to the mere formation of the courts; it extends to encompass the full spectrum of judicial functions, including the essential power to handle contempt proceedings, as expressly provided for in s 229 of Act 585, the Syariah Courts (Criminal Jurisdiction) Act 1965;

(b) the language surrounding the 'constitution, organisation, and procedure of Syariah courts' must be construed in a comprehensive manner. Such a broad interpretation is imperative to ensure that these courts possess the full suite of judicial powers required to effectively administer justice in matters of Islamic law. Limiting this interpretation would undermine the courts' ability to fulfil their mandate, thereby jeopardising the legislative intent and purpose behind these provisions. A holistic understanding of these powers is essential for the proper functioning of the Syariah Courts within Malaysia's dual legal system. The legislative framework aims to enable the Syariah Courts to operate with the autonomy and authority needed to address the complexities of Islamic jurisprudence, thereby reinforcing their crucial role in upholding Islamic law in the country;

(c) moreover, the inviolability of the Syariah Courts' jurisdiction is further enshrined in art 121(1A) of the Federal Constitution. This provision,

introduced through a pivotal constitutional amendment in 1988, serves as a cornerstone in safeguarding the autonomy of Syariah Courts. It unequivocally states that civil courts, including the High Court, shall not have jurisdiction over matters within the purview of Syariah Courts. This provision was crafted with the intent of drawing a clear demarcation between the civil and Syariah legal systems, thereby protecting the integrity of the Syariah Courts' decisions from being challenged or overturned by the civil judiciary;

(d) s 229(3) of Act 585 has properly conferred Syariah Courts with jurisdiction to commence contempt proceedings and punish for contempt itself and this power is given under a written law. Thus, the civil court is not in a position to disturb the issuance of a notice to show cause made by the Syariah High Court;

(e) in addition, s 53 of the same Act also confers the supervisory and revisionary power to the Syariah Appeal Court to revise its lower court's decision. The respondent in this appeal has also submitted her case to the Syariah Appeal Court for revision which was dismissed. For the respondent now to say that the Syariah High Court has no jurisdiction to issue a notice to show cause for the contempt proceedings is therefore untenable. It is also an abuse process of court for the respondent to hop to civil court to complain over the Syariah High Court's ruling;

(f) it is pivotal to note that the notice to show cause by the Syariah High Court to the respondent is not a decision amenable to judicial review in any event;

(g) in practice, this constitutional safeguard means that civil courts are limited to ensuring that Syariah Courts act within their jurisdiction. Their role is to ensure that the Syariah Courts do not exceed their prescribed legal boundaries. Beyond this jurisdictional check, the civil courts are not permitted to delve into or alter the substantive decisions made by the Syariah Courts. This principle of judicial non-interference is crucial for maintaining the independence of the Syariah Courts, allowing them to render decisions on Islamic law matters without external encroachment; and

(h) this careful balance ensures a dual system where both civil and Syariah Courts operate within their respective domains, upholding the rule of law while preserving the distinctiveness of Islamic legal principles.

[60] Again, it is our respectful view that this legislative and constitutional framework not only empowers the Syariah Courts but also ensures that their autonomy is upheld. It provides them with the authority and independence necessary to administer Islamic justice effectively. This structural safeguard reflects Malaysia's commitment to a dual legal system, where the Syariah

A Courts are entrusted with the solemn duty of interpreting and applying Islamic law, free from undue interference.

Appellant's appeal allowed with no order as to costs; decision of the High Court set aside.

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Reported by Dzulqarnain Ab Fatar

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